# UNITED STATES PATENT AND TRADEMARK OFFICE

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| 10/812,791 | 03/30/2004 | Francis G. McCabe | 073338.0180 (04-50100 FLA | 4222 |

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| EXAMINER |
|---|
| VETTER, DANIEL |

| ART UNIT | PAPER NUMBER |
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| 3628 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *06 November 2008*.

2a)☒ This action is **FINAL**.      2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *2,5,7,10,13,15,18,21,23 and 27-39* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,5,7,10,13,15,18,21,23 and 27-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some * c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
     Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

## DETAILED ACTION

### *Status of the Claims*

1.      Claims 1-2, 5-7, 9-10, 12-15, 17-18, 20-23, and 25-26 were previously pending in this application.  Claims 2, 5, 7, 10, 13, 15, 18, 21, 23 were amended, claims 1, 6, 9, 12, 14, 17, 20, 22, 25, 26 were canceled, and new claims 27-39 were added in the reply filed November 6, 2008.  Claims 2, 5, 7, 10, 13, 15, 18, 21, 23, and 27-39 are currently pending in this application.

### *Response to Arguments*

2.      The newly added independent claim 35 suffers the same deficiencies under § 112, second paragraph, as the corresponding canceled claim.  Applicant has addressed these deficiencies neither by argument nor by amendment, and thus the new claims are rejected for the same reasons below.

3.      Applicant's arguments filed with respect to the rejections made under § 103(a) have been fully considered but they are not persuasive.  Applicant argues that DeLorme is not sufficient to teach certain recited limitations.  However, the remarks merely provide an identification of the disputed claim language, the cited portions of DeLorme, and a conclusory statement that the reference is deficient.  Applicant presents no analysis comparing the claim language to the cited prior art.  Moreover, it is unclear which specific portions of the claim language are being disputed.  Does applicant dispute that the terms and user preferences set forth in DeLorme can be considered "descriptors?"  Or that the claimed "agents" and "interfaces" read upon DeLorme's software searching systems and user input subsystems?  Examiner maintains that the comprehensive TRIPS system of DeLorme teaches each element of the claims as set forth below, and the rejections are maintained.

### *Claim Rejections - 35 USC § 112*

4.      The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.      Claims 18, 21, 23, and 35-38 are directed to "logic for building an itinerary, the logic embodied in a tangible computer-readable medium and operable to" perform the recited steps.  However, it is unclear how "logic" is "operable to" perform steps.  Even if it is functional/executable to cause a computer to perform certain steps, the "logic" itself would not perform the recited identifying services and other steps, rather a computerized system on which the logic is stored performs the steps.  Moreover, the term "logic" reasonably encompasses the reasoning behind a software program, aside from the executable program itself (see e.g., Specification page 13, line 12, referring to Fig. 4 as a "logic diagram").

## *Claim Rejections - 35 USC § 102*

6.      The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7.      Claims 2, 5, 7, 10, 13, 15, 18, 21, 23, and 27-39 are rejected under 35 U.S.C. 102(b) as being anticipated by DeLorme, et al., U.S. Pat. No. 5,948,040 (Reference A of the PTO-892 part of paper no. 20070823).

8.      As per claim 27, DeLorme teaches a method for building an itinerary, comprising: storing, at a description database of a user agent operating on behalf of a consumer, a plurality of user descriptors (col. 40, lines 62-67; col. 74, lines 56-66); reviewing a plurality of service descriptors provided from a plurality of service description databases stored in a plurality of service agents operating on behalf of a plurality of service providers (col. 30, lines 1-17, 58-65); sending at least one user descriptor of the plurality of user descriptors through an interface of the user agent to an interface of at least one service agent of the plurality of service agents (col. 10, lines 21-31; col. 30, line 66 – col. 31, line 5); receiving at the interface of the user agent from the interface of the at least

one service agent at least one service offering generated by comparing the sent at least one user descriptor to at least one knowledge base coupled to the at least one service agent (col. 19, lines 36-39; col. 41, lines 45-50); presenting a timeline and the at least one service offering (col. 22, lines 24-26; col. 41, line 57; Fig.1B-2); receiving approval of the at least one service offering at the user agent (col. 19, lines 43-44; col. 20, lines 19-22); indicating one or more available times of the approved service offering (col. 19, lines 44-45; col. 41, lines 51-58); receiving a selection of an available time of the one or more available times (col. 19, lines 44-45; col. 41, lines 51-58); incorporating an approved service offering into a plan stored in the user agent by utilizing a plan processing engine at the user agent (col. 42, lines 60-65); sending a set of user descriptors of the plurality of user descriptors through an interface of the user agent to an interface of at least one advertising agent (col. 64, lines 5-10, 20-21); and receiving at the interface of the user agent from the interface of the at least one advertising agent at least one advertisement generated by comparing the sent set of user descriptors to at least one service description stored in a database coupled to the at least one advertising agent (col. 61, lines 49-50, 54-55).

9.      As per claim 31, DeLorme teaches a system for building an itinerary, comprising: a user agent comprising: a description database comprising a plurality of user descriptors (col. 40, lines 62-67; col. 74, lines 56-66); a first interface (Fig. 2); at least one plan (col. 41, lines 14-16); a code segment embodied in a tangible computer-readable medium, which, when executed, is operable to: review a plurality of service descriptors provided from a plurality of service description databases stored in a plurality of service agents operating on behalf of a plurality of service providers (col. 30, lines 1-17, 58-65); send at least one user descriptor of the plurality of user descriptors through the first interface to a second interface, the second interface comprised by at least one service agent of the plurality of service agents (col. 10, lines 21-31; col. 30, line 66 – col. 31, line 5); receive at the first interface at least one service offering from the second interface generated by comparing the sent at least one user descriptor to at least one knowledge base coupled to the at least one service agent (col. 19, lines 36-

39; col. 41, lines 45-50); present a timeline and the at least one service offering (col. 22, lines 24-26; col. 41, line 57; Fig.1B-2); receive approval of the at least one service offering (col. 19, lines 43-44; col. 20, lines 19-22); indicate one or more available times of the approved service offering (col. 19, lines 44-45; col. 41, lines 51-58); receiving a selection of an available time of the one or more available times (col. 19, lines 44-45; col. 41, lines 51-58); send a set of user descriptors of the plurality of user descriptors through the first interface to a third interface, the third interface comprised by at least one advertising agent (col. 64, lines 5-10, 20-21); and receive at the first interface least one advertisement from the third interface generated by comparing the sent second user descriptor to at least one service description stored in a database coupled to the advertising agent (col. 61, lines 49-50, 54-55); and a plan processing engine operable to incorporate an approved service offering into the at least one plan (col. 42, lines 60-65); and interface equipment operable to interact with the user agent (Fig. 2; col. 13, lines 48-52).

10.     As per claim 35, DeLorme teaches logic for building an itinerary, the logic embodied in a tangible computer-readable medium and operable to: store, at a description database of a user agent operating on behalf of a consumer, a plurality of user descriptors (col. 40, lines 62-67; col. 74, lines 56-66); review a plurality of service descriptors provided from a plurality of service description databases stored in a plurality of service agents each operating on behalf of a service provider (col. 30, lines 1-17, 58-65); send a first user descriptor of the plurality of user descriptors through an interface of the user agent to an interface of at least one service agent of the plurality of service agents (col. 10, lines 21-31; col. 30, line 66 – col. 31, line 5); receive at the interface of the user agent from the interface of the at least one service agent at least one service offering generated by comparing the sent first user descriptor to at least one knowledge base coupled to the at least one service agent (col. 19, lines 36-39; col. 41, lines 45-50); receive approval of the at least one service offering at the user agent (col. 19, lines 43-44; col. 20, lines 19-22); incorporate an approved service offering into a plan stored in the user agent by utilizing a plan processing engine (col. 42, lines 60-65);

send a second user descriptor of the plurality of user descriptors through an interface of the user agent to an interface of at least one advertising agent (col. 64, lines 5-10, 20-21); and receive at the interface of the user agent from the interface of the at least one advertising agent at least one advertisement generated by comparing the sent second user descriptor to at least one service description stored in a database coupled to the advertising agent (col. 61, lines 49-50, 54-55).

11.     As per claim 39, DeLorme teaches a system for building an itinerary, comprising: a service agent, comprising: a first interface (Fig. 2); a knowledge base (Fig. 2); a service description database comprising at least one service descriptor (Fig. 3); an advertising agent comprising;

a second interface (col. 64, lines 37-44); a database comprising a plurality of service descriptions (col. 64, lines 5-10); a user agent, comprising:

a third interface coupled to the first interface and the second interface (Fig. 2; col. 30, lines 37-56; col. 64, lines 37-44); a description database comprising a plurality of user descriptors (col. 40, lines 62-67; col. 74, lines 56-66); at least one plan (col. 41, lines 14-16); a code segment embodied in a tangible computer-readable medium, which, when executed, is operable to: review at least one service descriptor provided by the service agent through the third interface (col. 30, lines 1-17, 58-65); send a first user descriptor of the plurality of user descriptors through the third interface to the service agent (col. 10, lines 21-31; col. 30, line 66 – col. 31, line 5); receive at the third interface at least one service offering from the service agent generated by comparing the sent first user descriptor to the knowledge base at the service agent (col. 19, lines 36-39; col. 41, lines 45-50); receive approval of the at least one service offering (col. 19, lines 43-44; col. 20, lines 19-22); send a second user descriptor of the plurality of user descriptors through the third interface to the advertising agent (col. 64, lines 5-10, 20-21); and receive at the third interface least one advertisement from the advertising agent generated by comparing the sent second user descriptor to at least one service description stored in the database of the advertising agent (col. 61, lines 49-50, 54-55); and a plan

processing engine operable to incorporate an approved service offering into the at least one plan (col. 42, lines 60-65).

12.    As per claims 2, 10, and 18, DeLorme teaches claims 27, 31, and 35 as described above. DeLorme further teaches comparing service descriptions comprised by the knowledge base with the at least one user descriptor comprising a user requirement (col. 39, lines 26-43; col. 56, lines 33-36); and identifying the at least one service offering in accordance with the comparison (col. 39, lines 46-54; col. 56, lines 33-36).

13.    As per claims 5, 13, and 21, DeLorme teaches claims 27, 31, and 35 as described above. DeLorme further teaches indicating an offered timeframe during which the approved service offering is offered (col. 19, lines 37-41, 49-50; col. 41, line 51); receiving a selection of the approved service offering within the offered timeframe (col. 19, lines 35-37); and indicating the one or more available times of the approved service offering within the offered timeframe (col. 19, lines 43-45, 49-50; col. 41, lines 52-57).

14.    As per claims 7, 15, and 23, DeLorme teaches claims 27, 31, and 35 as described above. DeLorme further teaches detecting that the approved service offering has been placed in the timeline corresponding to the available time (col. 21, lines 8-12; col. 65, lines 37-52).

15.    As per claims 28, 32, and 36, DeLorme teaches claims 27, 31, and 35 as above. DeLorme further teaches sending prioritization information through the interface of the user agent to the interface of the at least one service agent (col. 26, lines 30-54), the prioritization information comprising at least one of a compatibility metric, a proximity metric, and an evaluation metric for a service (col. 26, lines 59-67), the compatibility metric measuring compatibility of the service and the one or more consumer descriptors, the proximity metric measuring the distance between the service and a consumer location of the consumer, the evaluation metric measuring at least one of a popularity and a rating of the service (col. 26, lines 40-42, 65-67; col. 30, lines 28-31); prioritizing the services in accordance with the prioritization information (col. 26, lines

37-40, 59-64); and identifying the at least one service offering in accordance with the prioritization (col. 26, lines 42-44, 64-67).

16.     As per claims 29, 33, and 37, DeLorme teaches claims 28, 32, and 36 as above. DeLorme further teaches wherein prioritizing the services in accordance with the prioritization information further comprises weighting the compatibility metric higher than the proximity metric (col. 26, lines 41-42) and weighting the proximity metric higher than the evaluation metric (col. 26, lines 14-28, 64-66; col. 47, lines 40-41).

17.     As per claims 30, 34, and 38, DeLorme teaches claims 27, 31, and 35 as above. DeLorme further teaches the timeline comprises a fuzzy

timeline undivided by a plurality of fixed time segments (col. 41, lines 24-25; Fig. 1B-2). Moreover, the elimination of fixed segments only further limits the non-functional descriptive data on the timeline itself.  The only previous mention of a timeline in the base claim is "present[ing] a timeline and the at least one service offering."  The timeline thus has no functional relationship with any other element in the claim (it is merely presented); and whether or not the timeline has fixed segments is of no patentable significance.  Non-functional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art. *In re Ngai*, 367 F.3d 1336, 1339; 70 USPQ2d 1862, 1864 (Fed. Cir. 2004); *cf. In re Gulack*, 703 F.2d 1381, 1385; 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

### *Conclusion*

18.     Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.  Accordingly, **THIS ACTION IS MADE FINAL**.  See MPEP § 706.07(a).  Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action.  In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19.      Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL P. VETTER whose telephone number is (571)270-1366. The examiner can normally be reached on Monday through Thursday from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W Hayes/

Supervisory Patent Examiner, Art Unit 3628